

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EVARISTO RODRIGUEZ,

Plaintiff,

DECISION AND ORDER

10-CV-6243L

v.

MR. BRIAN FISCHER,
MR. JAMES T. CONWAY,
MR. LESTER N. WRIGHT,
DR. RAO,
MS. KILLINGER,

Defendants.

Plaintiff Evaristo Rodriguez, appearing *pro se*, brings this action under 42 U.S.C. § 1983. Plaintiff, an inmate in the custody of the New York State Department of Correctional Services (“DOCS”), has sued several individual defendants, all of whom were at all relevant times employees or officials of DOCS.

One defendant, Brian Fischer, has moved to dismiss plaintiff’s claims against him under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In response, plaintiff states that he “is (agreeing) to have defendant Brian Fischer, removed from the Civil Complaint” Dkt. #14 at 1. Fischer’s motion is therefore granted.

Plaintiff has also moved for a temporary restraining order directing defendants to provide him with medical care for plaintiff's arthritis. That motion is denied. Plaintiff has not met the standards for the issuance of preliminary injunctive relief in this circuit. *See Zervos v. Verizon New York, Inc.*, 252 F.3d 163, 172 (2d Cir. 2001); *ABKCO Music, Inc. v. Stellar Records, Inc.*, 96 F.3d 60, 64 (2d Cir. 1996).

CONCLUSION

Defendant Brian Fischer's motion to dismiss (Dkt. #8, #11) is granted, and plaintiff's claims against Fischer are dismissed.

Plaintiff's motion for a temporary restraining order (Dkt. #15) is denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
November 12, 2010.